

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 705/JP/2017
निर्धारण वर्ष/Assessment Years : 2013-14.

Shri Sandeep Chhabra, 4343, Nathmal Ji Ka Chowk, Johari Bazar, Jaipur.	बनाम Vs.	Assistant Commissioner of Income Tax, Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAPPC 5032 M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vijay Goyal (CA)
राजस्व की ओर से/ Revenue by : Smt. Rolly Agarwal (CIT)

सुनवाई की तारीख/ Date of Hearing : 24.10.2017.
घोषणा की तारीख/ Date of Pronouncement : 25/10/2017.

आदेश/ ORDER

PER SHRI KUL BHARAT, J.M.

This appeal by the assessee is directed against the order of Id. CIT (A)-4, Jaipur dated 23.08.2017 pertaining to A.Y. 2013-14. The assessee has raised the following grounds of appeal :-

1. On the facts and in the circumstances and in law the Id. CIT (A) erred in rejecting the grounds taken by assessee in appeal memo and dismissing the appeal of the assessee in limine by erroneously holding that the assessee is not interested in filing the supportive details for the appeal filed and pursuing it further.
2. On the facts and in the circumstances and in law the Id. CIT (A) erred in not deciding the appeals on merit.

3. On the facts and in the circumstances and in law the Id. CIT (A) erred in deciding the appeal of the assessee without providing adequate opportunity of hearing. The order passed by Id. CIT (A) is against the principle of natural justice and deserves to be set aside.
4. The order passed by Id. AO u/s 153A read with section 143(3) of the Income Tax Act is bad in law, void ab-initio, and deserves to be annulled because of the following reasons :-
 - (i) The assessment is purely based on the recommendation in appraisal report. The AO has not applied his mind. It is contended that the AO's opinion cannot be substituted by another officer's opinion.
 - (ii) That the order of the Id. Assessing Officer is arbitrary, whimsical, capricious, perverse and against the law and facts of the case.

The Id. CIT (A) has erred in not deciding this legal issue on merit by passing speaking order on merit.

5. On the facts and in the circumstances of the case and in law the addition of Rs. 68,40,468/- made by Id. AO on account of alleged unrecorded/unaccounted payment made to M/s. Alumayer India Pvt. Ltd. worked out by Id AO on the basis of page No. 41-43 of Annexure BS-11 seized from residence of Shri Neeraj Ajmera and by ignoring the other seized material found from residence of assessee is unwarranted, highly unjustified and deserves to be deleted.
6. The assessee prays for leave to add, to amend, to delete, to modify the all or any grounds of appeal on or before the hearing of appeal.

2 At the time of hearing, Id. Counsel for the assessee submitted that the impugned order was passed ex parte without providing any opportunity to the assessee which has caused serious prejudice to the assessee and resulted into gross miscarriage of justice.

2.1 On the contrary, the Id. D/R opposed the submissions and pointed out various opportunities were given to the assessee.

2.2. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. The Id. CIT (A) has observed in para 3 of his order as under :-

"3. During the course of appellate proceedings, various notices fixing the dates of hearing were issued, the details of which are tabulated as under :-

<i>Date of Notice</i>	<i>Date of hearing</i>	<i>Remarks</i>
<i>1.10.2015</i>	<i>19.10.2015</i>	<i>No compliance</i>
<i>9.6.2016</i>	<i>29.6.2016</i>	<i>Adjournment letter filed. The case adjourned to 12.7.2016.</i>
<i>-</i>	<i>12.7.2016</i>	<i>No compliance</i>
<i>10.8.2016</i>	<i>22.8.2016</i>	<i>Adjournment letter filed. The case adjourned to 26.8.2016.</i>
<i>-</i>	<i>26.8.2016</i>	<i>No compliance</i>
<i>5.6.2017</i>	<i>21.6.2017</i>	<i>No compliance</i>
<i>9.8.2017</i>	<i>21.8.2017</i>	<i>No compliance</i>

It is clear from the above that the appellant was offered as many as 7 opportunities. However, no compliance or no submissions were made on these dates. The appeal is therefore, decided on the basis of facts on record."

We find that Id. CIT (A) has given sufficient opportunity to the assessee. However, in the interest of principles of natural justice, we deem it proper to set aside the order of Id. CIT (A) to decide the appeal on merit. In view of the fact that the assessee was granted various opportunities by the Id. CIT (A), a cost of Rs. 2000/- is imposed on the assessee. The assessee would himself appear before the Id. CIT (A). The Id. CIT (A) would decide the issue on merit expeditiously. The assessee is directed not

to seek any adjournment without any reasonable cause. Appeal of the assessee is allowed for statistical purposes in the terms indicated hereinabove.

3. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25/10/2017.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

Sd/-

(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

दिनांक / Dated:- 25/10/2017.

das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Sandeep Chhabra, Jaipur.
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 705/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar